

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(IFB 43-11-12)
REVISED

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 9th day of October, 2012 by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Envirowaste Services Group, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 4 S.E. 1st Street, 2nd Floor, Miami, FL 33131 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on August 3, 2012, the City of North Miami ("City") advertised *Invitation for Bid #43-11-12, Smoke Testing of the Gravity Sanitary Sewer Collection System* ("IFB"), to provide the City with the labor, equipment, materials, services, and expertise necessary for the smoke testing of the City's gravity sanitary sewer collection system, in accordance with applicable federal, state and local regulations, and in accordance with the terms, conditions and specifications contained in the IFB ("Services"); and

WHEREAS, Contractor was evaluated by the City as the most responsive, responsible bidder whose bid, qualifications and references demonstrated to be the most advantageous to the City; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to the IFB; and

WHEREAS, on ~~September~~ October 9, 2012, the Mayor and City Council passed and adopted Resolution No. R-2012- ____, approving the selection of Contractor and authorized the City Manager and City Attorney to negotiate and execute this Agreement, for the provision of Services.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 The City's *Invitation for Bid #43-11-12, Smoke Testing of the Gravity Sanitary Sewer Collection System*, incorporated hereto by reference;

2.1.2 Contractor's Bid Submittal Forms in response to the IFB dated August 23, 2012 ("Bid"), attached hereto as "Exhibit A"; and

2.1.3 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The IFB.

2.3 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the IFB prior to Contractor submitting its Bid or the right to clarify same shall be waived.

ARTICLE 3 - TERM

3.1 Subject to authorized adjustments, the Term of this Agreement shall be the period commencing October 1, 2012 through February 28, 2013, unless terminated earlier by the City. Contractor agrees that the performance of Services shall be pursued on schedule, diligently, uninterrupted and at a rate of progress which will ensure full completion of Services within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Contractor and the acceptance of such Services by the City.

3.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 The Contractor shall be paid an amount not to exceed Two Hundred Thousand and no/100 Dollars (\$200,000.00) as full compensation for the provision of Services. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES

5.1 As an inducement for the City to enter into this Agreement, Contractor has represented an expertise in the provision of Services on similar public projects. In reliance upon those representations, the City has entered into this Agreement with Contractor for the provision of Services.

5.2 Contractor shall supervise and direct the work competently and efficiently, devoting such attention and applying Contractor's best skill, attention and expertise. Contractor shall be solely responsible for, and have control over the means, methods, techniques, sequences and procedures of the work and shall ensure that the finished Services accurately comply with the Contract Documents.

5.3 When necessary, Contractor shall provide and pay for competent, suitably qualified personnel to perform the Services as required by the Contract Documents. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall at all times maintain good discipline and order at all worksites.

5.4 Prior to the execution of this Agreement and in any event, prior to the commencement of any work, Contractor shall furnish in writing to the City, the names of persons or entities proposed for any portion of the Services ("Subcontractor"). The City shall advise Contractor, in writing, of any proposed Subcontractor to which the City has an objection. Contractor shall not contract with a proposed Subcontractor with whom the City has made an objection. If the City objects to a Subcontractor proposed by Contractor, Contractor shall propose another with whom the City has no objection.

5.5 Contractor shall confine equipment, the storage of materials and the operations of workers to the worksite and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the premises with equipment or other materials.

ARTICLE 6 - SCOPE OF SERVICES

6.1 The Contractor shall provide all required labor, supervision, materials, equipment, tools, transportation, services and expertise necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

6.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

6.3 Contractor agrees and understands that: (i) any and all Subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

6.4 During performance of the Services, Contractor shall cause a minimum of inconvenience to the public and to local business activities and shall ensure that the public roadways and any improvements or appurtenants in the vicinity of a worksite, remain open to the public whenever and wherever possible.

6.5 Contractor shall at all times, during the performance of Services, keep the worksite free and clear of all rubbish and debris. Any material or waste generated by Contractor or its employees, agents and Subcontractors shall be removed and disposed of by the Contractor at its expense, to the satisfaction of the City.

6.6 In the event Contractor fails to remove all rubbish, debris, materials and waste from the worksite, the City may employ labor and equipment necessary to clear the site and charge Contractor for the City's cost incurred cleaning the site.

6.7 Contractor shall notify the City in writing, of any pre-existing damage to surrounding roadways, swales and improvements prior to commencing any work. Failure to notify the City of any damage shall result in the Contractor's duty to repair the damage at no additional expense to the City.

6.8 Contractor shall restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the Contractor during the performance of Services. Contractor shall leave the worksite unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.

6.9 Contractor shall maintain suitable and sufficient guards, barriers and lighting for the prevention of accidents. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

6.10 Contractor shall promptly correct all defective work and shall bear all direct, indirect and consequential costs for the correction or removal of defective work.

6.11 Services shall be completed by the Contractor to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

ARTICLE 7 - CHANGES IN SERVICES

7.1 One or more changes to the work within the general scope of this Agreement may be ordered by Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and with the terms and conditions described in this Article.

7.2 A Change Order shall mean a written order to the Contractor executed by the Parties following execution of this Agreement, directing a change in Services and may include a change in the agreed compensation and/or the time for Contractor's performance.

7.3 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement with the ordered changes in Services and the Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from, the work included within or affected by the executed Change Order.

ARTICLE 8 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

8.1 Contractor shall comply and shall secure compliance by its employees, agents, and Subcontractors, with all applicable environmental, health, safety and security laws and regulations pertaining to the Services provided under this Agreement. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry standards, and to ensure that such protective devices are properly used by its employees, agents and Subcontractors in the provision of Services.

8.2 The Contractor shall be solely responsible for pedestrian and vehicular control and safety within the worksite area and shall provide the necessary warning devices, cones, markers, flags, barricades and other control devices, in addition to ground personnel needed for directing traffic and maintaining safety, protection and warning to all persons and vehicular traffic within the worksite area.

8.3 The Contractor represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Contractor, that the Contractor has the professional expertise, ability, capacity, skill, licenses, financial resources, and experience to perform the Services under the requirements of this Article.

ARTICLE 9 - INDEPENDENT CONTRACTOR

9.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

ARTICLE 10 - CONFLICTS OF INTEREST

10.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

10.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 11 - DEFAULT

11.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 12 - CITY'S TERMINATION RIGHTS

12.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 13 - NOTICES

13.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Envirowaste Services Group, Inc.
 Attn: Eduardo Barba
 4 SE 1st Street
 Miami, FL 33131
 Phone: (305) 374-7038
 Fax: (305) 374-7044

To City: City of North Miami
 Attn: City Manager
 776 N.E. 125th Street
 North Miami, Florida 33161

With a copy to: City Attorney
 City of North Miami
 776 N.E. 125th Street
 North Miami, Florida 33161

13.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

13.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 14 - INDEMNIFICATION

14.1 Execution of the Agreement by Contractor is a representation that Contractor has visited the worksites and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

14.2 The Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractors, employees and managers in the performance of the Services under this Agreement.

14.3 The Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, Subcontractors, suppliers, or other persons directly or indirectly employed by its Subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

14.4 The Contractor shall assume full responsibility for any damage to any mangroves, preserves, private or public land or areas, resulting from the performance of this Agreement.

14.5 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any work, labor, services, material, equipment, or other items furnished in connection with the Services, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by bond, payment, or otherwise within ten (10) days of the filing or from receipt of written notice from the City.

14.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 15 - WARRANTY

15.1 The Contractor warrants that all materials and workmanship, whether furnished by the Contractor, its Subcontractors or suppliers will comply with the Contract Documents.

15.2 Contractor warrants that all materials and workmanship furnished, whether furnished by the Contractor, its Subcontractors or suppliers shall be of good quality will be free from defects whether patent or latent in nature. If, within one (1) year after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by City, Contractor shall promptly, without cost to City, either correct such defective work, or, if it has been rejected by City, remove it from the site and replace it with non-defective work that is satisfactorily correct to the City. If Contractor does not promptly comply with the terms of such instructions, the City may have the defective work corrected and all direct, indirect and consequential costs of such removal and replacement, including but not limited to fees and charges of engineers, attorneys and other professionals, shall be paid by Contractor.

ARTICLE 16 – INSURANCE & BONDS

16.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any Subcontractor to begin work until after similar minimum insurance to cover Subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

16.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

16.3 A payment and performance bond in the amount of 100% of the compensation amount of this Agreement shall be required by the Contractor prior to the commencement of Services. The payment bond shall secure and guarantee payment of all persons performing labor or providing materials for the Services rendered under this Agreement. The performance bond shall secure and guarantee Contractor's faithful performance of this Agreement, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents.

ARTICLE 17 - FORCE MAJEURE

17.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to

the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 18 - PUBLIC RECORDS

18.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 19 – COMMUNITY BENEFITS

19.1 As an inducement for the City to enter into this Agreement, Contractor reaffirms its commitment of providing the City with community benefits as may be defined, requested, and approved by the City Manager, in accordance with Section 2.1 and Section 2.30 of the IFB. The approved community benefits submitted by the Contractor shall be incorporated into and shall become a part of this Agreement. Such community benefits shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code. The Contractor further acknowledges that the City has relied upon these representations and commitments, as a basis of selecting Contractor for the provision of Services.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

20.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

20.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

20.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

20.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

20.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

20.6 The City reserves the right to audit Contractor's records covered by this Agreement at any time, upon reasonable notice and during business hours during the provision of Services, and for a period of three (3) years after final payment is made under this Agreement.

20.7 Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

20.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

20.9 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

20.10 The professional Services to be provided by Contractor shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

20.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

20.12 Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

20.13 All other terms, conditions and requirements contained in the Contract Documents, which have not been modified by this Agreement, shall remain in full force and effect.

20.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

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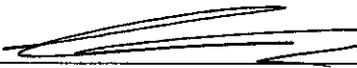
IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Envirowaste Services Group, Inc., a Florida
for profit corporation: "Contractor":

Corporate Secretary or Witness:

By: 

By: 

Print Name: Ralph Barba

Print Name: Eduardo Barba

Date: 10/29/12

Date: 10/29/12

ATTEST:

City of North Miami, a Florida municipal
Corporation: "City"

By: 

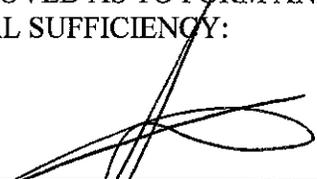
By: 

Michael A. Etienne
City Clerk

for Stephen E. Johnson
City Manager



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 

Regine M. Monestime
City Attorney